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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re CANDIDO M. et al., Persons Coming
Under the Juvenile Court Law.

B160273

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

(Super. Ct. No. CK 49154)

Plaintiff and Respondent,

v.

VERONICA D.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.
Margaret S. Henry, Judge. Affirmed and reversed in part with directions.

Anna L. Ollinger, under appointment by the Court of Appeal, for Defendant
and Appellant.

Lloyd W. Pellman, County Counsel, Pamela S. Landeros, Deputy County
Counsel, for Plaintiff and Respondent.

Veronica D., mother of Candido, born in 1991, Oscar, born in 1997 and Abel, born in 1999, appeals from the findings and orders rendered at the combined jurisdictional/dispositional hearing. Mother claims the facts were insufficient to support (I) dependency jurisdiction. She also contends (II) her due process right to a hearing on disposition was violated because the court refused her request for a continuance so that she might receive a psychological evaluation. Mother further claims (III) the facts were insufficient to support the dispositional order removing the children from her custody. We affirm the jurisdictional findings and orders. We reverse and remand the matter for a new dispositional hearing and, therefore, do not reach Mother's assertion that insufficient evidence underlay the dispositional order.

BACKGROUND

The children were detained on May 28, 2002, following a referral by Patricia Valdez, Ph.D., who was treating Oscar for "Adjustment Disorder with Mixed Disturbance of Emotion and Conduct." His secondary diagnosis was "Parent-Child Relational Problem." Valdez had called the family home to give mother her appointment for a complete family assessment. Father answered the phone. He sounded "annoyed," apparently because Mother had not told him about the assessment. Father said Mother needed an assessment "because she was suicidal and . . . was thinking about killing herself with the children by getting in the car to crash." Father ended the phone call, saying he would call back Valdez. Valdez sensed Mother's entrance caused Father to end the call.¹ When he did not call back, Valdez was "worried for the children's safety" and called respondent's hot line. The same day, an emergency response child protective services worker/children's social worker, Chioke Nayo, accompanied by two Sheriff's deputies, removed the children from the home.

¹ Father is not a party to this appeal.

At the detention hearing the court found a prima facie case for detention on the ground that a substantial danger existed to the children's physical and emotional health and there was no reasonable means to protect them without removal (Welf. & Inst. Code, § 300, subds. (a), (b)).² The court also found respondent had made reasonable efforts to prevent removal. The court ordered the children into foster care and granted respondent discretion to release them to any approved relative. The court ordered family reunification services for both parents and twice-weekly, monitored visits for each parent separately, with discretion in respondent to liberalize.³ At Mother's request, the matter was set for a no-time waiver, contested adjudication.

The jurisdictional/dispositional report for June 21, 2002, related Father's admission of a 1995 arrest for driving under the influence. Father said he completed an 18-month Alcoholics Anonymous program (in February 2000) and a rehabilitation program, and was currently participating in AA meetings and a rehabilitation program. Mother, Candido, Oscar and Father said Father continued to drink beer.

Mother described the alleged April 2002 domestic violence incident as a struggle. Father denied any domestic violence had occurred. Additional detail concerning the incident is included in part I of the Discussion, *infra*.

Candido, in third grade, was performing at grade level. A letter from his school's Magnet Coordinator, also recently Candido's teacher, expressed shock to hear of

² Additional statutory references are to the Welfare and Institutions Code.

³ This family first came to respondent's attention in August 2000, on two separate allegations of general neglect. Neighbors reported seeing Oscar frequently running in the street without adult supervision. The evidence was found inconclusive. In April 2002, respondent received a referral alleging Father physically abused Mother and Candido. Father was arrested for domestic violence. Mother agreed with respondent not to let him back in the home and to obtain a restraining order. Mother also agreed she would participate in domestic violence counseling. The case was closed effective May 1, but as of later that month, Mother was not in counseling. Mother obtained a temporary restraining order. On May 9, she successfully petitioned the court to dismiss the order. She told CSW Nayo she let Father move back in "because they worked things out." In her written petition to dismiss the restraining order, however, Mother asked the court to vacate the order because she did not have problems with the neighbors when Father was living in the home. Dr. Valdez's referral came on May 28.

Apparently, Mother had obtained at least one restraining order against Father in 1998 and they did not live together again until 2001.

Candido's removal from parents. He said the family had moved so that Candido could attend a magnet school. When the school year began, both parents attended Back-To-School Night and the first parent conference. Mother often came to the classroom asking about Candido's progress. Because Candido was having problems in mathematics, Mother had signed him up for extra help. At the writer's request, Father had come to a conference to address an incident of misbehavior, after which no further incidents occurred.

Oscar, in pre-kindergarten at Children's Institute International, was progressing in therapy. He had learned to separate from Mother and improved at following staff requests, although he continued to have difficulty following directions at home. Mother was appropriately involved with Oscar's therapy. The children were living together in a foster home, where they were doing well. The foster mother said there had been no problems with parental visits, that the children were strongly bonded to their parents and wanted to return to them.

Both parents were described as cooperative and willing to comply with respondent's case plan. They had enrolled in a parenting course and Father was attending AA meetings. Mother did not perceive a familial problem. She blamed Dr. Valdez for the referral, but was willing to follow the case plan so the children would be returned. Father denied the family had a domestic violence or alcohol problem, but would participate in the programs because he wanted his children returned. The case plan was signed by CSW Cristina Paredes.

At the beginning of the hearing on June 25, 2002, the court announced the hearing as a contested adjudication and disposition. At the conclusion of the hearing on June 26, the court found by a preponderance of the evidence that two of the five allegations (b-1 and b-2) should be amended and sustained and one other count (b-3) should be sustained

as alleged. (§ 300 subd. (b).) The text of the sustained allegations appears in part I of the Discussion, *infra*.⁴

With respect to the disposition, the court denied Mother's request for a continuance so that an Evidence Code section 730 evaluation of her could be done and declared the children dependents of the court. The court found by clear and convincing evidence pursuant to section 361, subdivision (c), that substantial dangers existed to the children's physical and emotional well-being and there were no reasonable means to protect them without removal from the parents' physical custody. The court further found reasonable efforts were made to prevent and eliminate the need for the removal.

The court ordered an Evidence Code section 730 evaluation of Mother, to address suicidal ideation and, if possible, assess visitation and reunification. The CSW was to use her best efforts to locate the children again in a single foster home. (Candido and Oscar remained in the original foster home; Abel had been relocated.) Sibling visits were to occur at least twice a month. Mother and Father were granted monitored, two-hour visits at least twice a week, with discretion in respondent to liberalize. Respondent was to assist the family in finding a new residence.

Mother was to attend a respondent-approved program of domestic violence counseling, parent education and individual counseling to address "[L]ife issues and Alanon type issues." Father was ordered to attend domestic violence counseling, parent education, and an alcohol program with "5 random testing."

Mother filed her notice of appeal on July 24, 2002.⁵

⁴ The court struck two counts, counts a-1 (periodic exposure to violent confrontations between parents) and b-4 (in April 2002, Mother had entered into a voluntary agreement for informal family maintenance supervision).

⁵ Mother's self-prepared, handwritten notice requested the court read her papers and the children be placed together. She asked for a new lawyer and a new social worker because the current ones did not help her. On February 28, 2003, we denied respondent's motion to dismiss the appeal on the ground that Mother's notice of appeal was inadequate.

DISCUSSION

I

Mother claims the facts were insufficient to support dependency jurisdiction and asks that the jurisdictional order declaring the children dependents of the court be reversed and the dispositional and all subsequent orders be vacated as moot. We disagree.

“Substantial evidence is evidence that is ‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such findings. [Citation.] [¶] It is axiomatic that an appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence.” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

“‘If there is any substantial evidence to support the findings of the juvenile court, a reviewing court must uphold the trial court’s findings. All reasonable inferences must be in support of the findings and the record must be viewed in the light most favorable to the juvenile court’s order. [Citation.]’ [Citation.]” (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 168.) The standard of proof at a jurisdictional hearing is preponderance of the evidence. (§ 355, subd. (a).)

Mother’s Emotional Problems. The amended, sustained allegation read, “b-1 [¶] The children[’s] . . . mother . . . has exhibited emotional problems, including . . . suicidal ideation. Further, the children’s mother has threatened to place the children in the family car and kill[] herself and the children. Such inability and conduct by the children’s mother[] places the children at substantial risk of suffering serious harm, damage, danger and death.”

Mother focuses on Father’s inconsistent statements concerning Mother’s mental condition. As noted, Dr. Valdez reported Father’s comment that Mother needed assessment “‘because she was suicidal and she was thinking about killing herself with the children by getting in the car to crash.’” The children were removed from the home.

Emergency responder, CSW Nayo, reported Mother said she was unaware anyone had made a child abuse report. She said it must have been the neighbor, with whom her family had been having problems. Mother said she took good care of the children, ensured they went to school, and showed Nayo the children's immunization records. Mother said she never told anyone she wanted to get in the car with the children and crash the car. She said she "had some stress," but was not suicidal.

In his interview with Nayo, Father initially denied reporting Mother was suicidal and wanted to use the car to kill herself and the children. However, "[a]s the evening progressed, . . . [F]ather . . . stated that in fact . . . [M]other did tell him that she wanted to commit suicide and kill the children in the car." He admitted making the statement to Valdez. He added Mother needed help because she was "very stressed" and said he was concerned for the children's safety with Mother. He said generally Mother took good care of the children, but she was "under a lot of stress and he is afraid that she might hurt the children and herself."

Two Sheriff's deputies accompanying Nayo said they saw no reason to take Mother in for a 72-hour evaluation because she was "rational," was "not exhibiting any strange behaviors, and [was] cooperating."⁶

At the jurisdictional hearing, the court heard testimony from CSW Ruth Pech, who had investigated the April 2002 referral, and Cristina Paredes, the dependency investigator/CSW who succeeded Noya. Paredes testified Mother denied ever feeling depressed. Valdez confirmed to Paredes that Father had made the statement attributed to him. Father told Paredes he had not made the statement. According to the evidence she had seen, Paredes had no information Mother had ever mistreated any of the children. The parties stipulated that Paredes did not observe Mother to be suicidal.

⁶ Section 5150 permits a peace officer to take a person for a 72-hour treatment and evaluation at certain facilities if the peace officer has probable cause to believe that person, as a result of mental disorder, is a danger to others or herself.

Father testified that sometimes, when she is “really upset,” Mother says things “in ways that she does not remember[.]” Asked if Mother had ever threatened to put the children into a car and hurt them, Father answered, “Maybe. She said it on one time or another, but that’s when she gets really upset. She mentioned it one or two times in the past.” She had said that “[p]robably two or three years [ago when] she gets upset. She likes to take the kids and just drive away because of all the problems that we’ve been having with the apartment that we live in.” She had never acted on a threat to hurt the children or herself. She had never taken a weapon and threatened to use it on herself. He had never seen her physically or emotionally abuse the children.

Father said that on the evening the children were removed, he first denied making the statement about Mother and then told Nayo he was worried about Mother. Later, outside the house, and away from Mother, Father told Nayo he was concerned that Mother wanted to commit suicide and kill the children in the car. “When she gets upset she says a lot of things.” She had said that in the past.

On cross-examination by the children’s counsel, Father said Mother had told him she wanted to kill herself and the children once, when she had had an argument with a neighbor. He did not remember the date. Mother said she wanted to get the kids, drive away, and never return. He thought she made the statement at the beginning of April 2002. She “probably” also said she wanted to kill the children. “[S]ometimes when she gets upset, she says things like that.” He did not know whether to believe her, “but she was upset. I did not let her have the kids at that time. I went out -- we went over together. I tried to calm her down.” He “was concerned about the safety of her and . . . our kids.” Asked if he believed she would act on her statement, Father replied, “I don’t know if I should say I believe[d] her. I was worried about it.”

Mother denied ever having attempted to kill herself or kill or physically abuse the children. She denied ever telling Father she wanted to kill herself and the children. When she becomes “stressed,” she “talk[s] a lot.”

The court sustained the allegation, as amended to delete the original reference to “mental” problems.

Father appears to have been a reluctant witness when it came to negatively describing Mother’s behavior. However, he consistently painted a picture of a woman who became unstable when she was “upset.” His testimony that in early April 2002, Mother had said she wanted to put the children in the car, drive away, and never return, and also said she wanted to kill the children had caused him to worry about her safety and that of the children. This was significant testimony which the juvenile court believed and amply supported the court’s jurisdictional finding.

Domestic Violence. The amended, sustained domestic violence allegation read, “b-2 [¶] The children . . . on one occasion were exposed to a violent confrontation between their father . . . and mother . . . in which the children’s father has struck the children’s mother in the presence of . . . Candido and there is a prior history of domestic violence. Said conduct by the children’s father[] endangers the children and places the children’s physical and emotional health and safety at risk of harm and damage and creates a detrimental home environment.”

Mother says the April 8, 2002, incident was too far removed from the June hearing date for the statements to have served as bases for the court’s finding. Yet the children were detained near the end of May 2002 and removed from parental custody. The incident was not stale.

Ruth Pech, who investigated the incident, testified she interviewed Mother on April 12. Mother told her she had called a domestic violence shelter because Father was abusing her and she had called the police, who had arrested him. Mother intended to stay in the home because Father has been removed. Mother said she would not allow Father into the home. Pech believed her.

Pech, who speaks English and Spanish, described Mother as “very cooperative.” Pech saw no risk to the children. Father was not home. Mother told Pech she was seeking a temporary restraining order; Pech took down the case number. A hearing on

the request was scheduled for April 26. Pech told Mother she (Mother) needed to follow through on obtaining a permanent order. Mother assured her she would. Pech did not have Mother sign a voluntary family maintenance contract because Mother was following through on the restraining order, Father was not home, and the children appeared to be well.

Pech interviewed Candido who said he “had tried to help his mother, and he got on top of his father and his father just threw him to the ground.” Based on her assessment of the situation at that point, Pech recommended the case be closed. If she had known Mother had petitioned the court for removal of the restraining order, rather than pursuing a permanent order, she would not have recommended closing the case. Instead, she would have tried to open voluntary family maintenance or family preservation with Mother.⁷

CSW/Dependency Investigator Cristina Paredes interviewed the children on June 19, 2002. She reported that Candido said, with respect to the domestic violence allegation, “It is not true. It only happened once. I do not remember when.” Oscar told Paredes, “He hit her with his hand over here (Oscar pointed with both open hands to both of his arms.).”

Mother denied the allegation, stating, “The day of the incident . . . I got home and my husband was sleeping. I took money out of his shirt pocket and he woke up and we struggled for the money and he pulled me by my blouse. Candido pushed him and my husband fell on the bed.” Father denied the incident, stating, “I always wait until the children are [a]sleep to talk to my wife. Just like any husband and wife.”

Mother characterizes the children’s statements as describing “an unusual event in their home where there may have been minimal physical exchanges, but the family altercation did not rise to the level of domestic violence.” She further states “a shoving

⁷ In 1998, Mother obtained a restraining order, which apparently was in effect until 2001. During that time, she lived with her brother-in-law, but continued to have a relationship with Father.

match between two parents over money does not portray an incident of fear, violence and physical abuse necessary for a finding of domestic violence.” She says the incident did not rise to the level of “abuse” defined in the Family Code as “‘placing a person in reasonable apprehension of imminent serious bodily injury to that person or another.’ [Citations.]”

Paredes testified she offered Mother domestic violence program participation. Mother “did not see that as an issue in her family.” Asked whether, if she became convinced that the parents had “fought” but no physical violence had been involved, she would still be required to recommend domestic violence counseling, Paredes answered, “Just the fact that Candido was present during the time that both father and mother were struggling, and that Candido went on top of the father, and grabbed him by his neck, so that he won’t hurt the mom. So that’s one concern that we have because the children are being exposed to their confrontations.”

Paredes described Candido as being “very reserved” and “self-guarded” when she interviewed him about the incident. Paredes twice stated Candido told her Father had hit Mother. Paredes’ testimony answers Mother’s characterizations of the incident as failing to rise to the level of abuse or domestic violence. The evidence was sufficient to support the court’s finding of jurisdiction based on domestic violence.

Alcohol Abuse. The sustained allegation concerning alcohol abuse read: “b-3 [¶] The children[’s] . . . father . . . is a current abuser of alcohol. Further, the children’s father becomes violent with the children’s mother when he is under the influence of alcohol. Further, the children’s father’s abuse of alcohol[] endangers the children and places the children’s physical and emotional health at risk of harm and damage and creates a detrimental home environment.”

Paredes reported that Mother stated, “‘Well, he drinks one beer at home then he goes out with his friends and drink[s] more. It is not true that he gets violent when he drinks, because he just goes to sleep when he drinks.’” Candido told Paredes the allegation was “‘not true. He only drinks one or two beers. I do not remember when. He

goes to alcohol classes. He no longer drinks. I think [it] has been about one month ago that he stopped drinking.” Oscar said Father “drinks beers.” Father said, “Not true. I only drink three or four beers every other day.”

Paredes also reported that Father admitted being arrested for driving under the influence in 1995. In February 2000, he completed an 18-month “Multiple Offender Program” program licensed by the California Department of Alcohol and Drug Programs. A signature sheet apparently accompanying the jurisdictional/dispositional report showed only that he had attended eight meetings between April 13 and April 29, 2002.

At the hearing, Mother first testified she called the Sheriff’s Department on April 8, 2002, “because my husband and I argued, and what I wanted was for him to get into an alcoholism treatment.” In her next response, however, she said, “He is going to Alcoholics Anonymous. It’s not affecting [our marriage].” She testified that before he began attending AA, Father’s alcohol problem was “[n]ot really[]” harming their relationship. “We just argued.” Mother later confirmed she had called the Sheriff’s Department on April 8 because she wanted him to enter an alcohol program.

She called law enforcement on April 8 because “sometimes the police would stop me and ask me why didn’t I just divorce him if he drank so much.” The police knew to ask that question “[b]ecause they have always chased after my husband.” Mother said a 12-year-old neighbor twice called the police and made up a story that Father had hit him. Father spent three days in jail. Mother did not know why.

Substantial evidence supported the juvenile court’s true finding on Father’s alcohol abuse.

II

Mother says her due process rights were abridged because the trial court denied her request for continuance of the dispositional hearing so that she might undergo an Evidence Code section 730 evaluation. Her claim that her continuance request should have been granted has merit.

At the May 31, 2002, detention hearing, at Mother's request, the court set the matter for a no-time limit, contested jurisdictional hearing on June 21, 2002. The notices for the June hearing mentioned only that "a hearing" had been set for June 21. Respondent's report for June 21 was prepared by Paredes and signed on June 20. The report was designated "Jurisdiction/Disposition Report."

At the beginning of the June 21 hearing, the court announced it intended to conduct a combined jurisdictional/dispositional hearing and then asked, "Is there any particular reason why disposition needs to be continued?" Receiving no response, the court invited respondent to proceed.

In the second day of testimony, Mother's counsel asked Cristina Paredes whether, in her opinion, an evaluation of Mother's emotional state would be helpful to the court in deciding whether the children could be safely returned home. Respondent objected under section 352 because respondent's recommendation was that Mother receive just such an evaluation. "So it's not as though [Paredes] does not think it would be helpful. It's evident by her report and by her testimony that it is important and we're just wasting court time." Mother's counsel replied, "I know the court wanted to do dispo at the same time. That's not going to be my request. If any petitions are sustained, I don't think we can do reasonable operational disposition without evaluation to rebut this allegation [of suicidal ideation]." The court permitted the question, overruling respondent's objection. The court did not respond to counsel's implicit request for a continuance to obtain a psychological evaluation. Paredes answered she thought an evaluation would be helpful.

Mother testified she had spoken with Oscar's therapist in an attempt to find a therapist to evaluate her. At the completion of testimony from Mother, the last person to testify, counsel asked for a continuance because the best rebuttal to respondent's allegation that Mother was suicidal or a danger to her children was "not just by how my client presents herself, but by a trained neutral observer." Counsel asked the matter be continued "to allow experts to be appointed" The court denied the request.

At the conclusion of the hearing, the court formally denied Mother's request for a continuance "based on request for a 730. I don't think that's any reason to put off the disposition in this case. And, in fact, it would be a disservice to everyone involved because we all know it takes at least 90 days to get a 730. In the meantime, the proper service and follow up, the Department are not going to be offered. And we have a deadline that would be exceeded." The court denied counsel's request for a five-minute recess, so he could call someone on the section 730 panel to see if the evaluation "could be done really quickly."

As does Mother, we believe the court's ruling was based on concern for meeting the statutory deadline. We reject respondent's argument that Mother's request for a no-time waiver adjudication provided justification for denial of Mother's request for a continuance of the disposition hearing. We also reject respondent's claim that Mother's continuance request was not timely. The placement of these children should not rest on such procedural niceties.

Section 352 (a) provides, as relevant, that on request of counsel, "the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interest, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements."

Continuances are to be granted only on a showing of good cause and only for a period shown necessary by evidence presented at the hearing. Written notice is to be filed at least two court days before the date set for the hearing, unless the court for good cause entertains an oral motion for continuance. (§ 352, subd. (a).)

Section 352, subdivision (b) provides: "Notwithstanding any other provision of law, if a minor has been removed from the parents' . . . custody, no continuance shall be granted that would result in the dispositional hearing, held pursuant to Section 361, being

completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance. . . . In no event shall the court grant continuances that would cause the hearing pursuant to Section 361 to be completed more than six months after the [detention hearing].”

The detention hearing occurred on May 31, 2002. The “exceptional circumstance” in this matter was that the core allegation concerning Mother and the reason for continued detention of the children -- whom Father testified she had never harmed -- was a single statement characterized as exhibiting “suicidal ideation.” An Evidence Code section 730 evaluation of Mother might well have resolved that issue and allowed the return of the children to Mother within the time limits of section 352. Mother’s request was not, as respondent suggests, based on her convenience. Nothing in the record before the juvenile court suggested Dr. Valdez had had any contact with Mother as a patient or derived any opinion about mother’s emotional status as a result of having dealt with her in Valdez’s treatment of Oscar. Valdez simply reported Father’s statement. As of June 20, Mother and Father were enrolled and participating in parenting classes at Children’s Institute International. They had attended three of the weekly classes. Of additional significance, Mother had tried to find a therapist to evaluate her, but was told “it would take a month,” apparently meaning the evaluation could not be completed in time for the June hearing.

Under these circumstances, we conclude the court abused its discretion in denying Mother’s request for a continuance. Because we reverse on this ground, we need not address Mother’s claim that insufficient evidence supported the juvenile court’s June 26, 2002, dispositional order removing the children from her custody.

DISPOSITION

The dispositional order of June 26, 2002, directing removal of the children from Mother’s custody is reversed. The matter is remanded for a new dispositional hearing at which the court will have the benefit of the Evidence Code section 730 evaluation

ordered on June 26, 2002, and any admissible oral, expert testimony thereon. The jurisdictional findings and orders of June 26, 2002, are affirmed.

NOT TO BE PUBLISHED.

ORTEGA, Acting P.J.

We concur:

VOGEL (Miriam A.), J.

MALLANO, J.